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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 TAMMY FRANKS,) NO. SACV 15-00108 JVS (DFMx)
11 Plaintiff,)
12 vs.) **[PROPOSED] PROTECTIVE**
13 CITY OF SANTA ANA,) **ORDER RE: DISCLOSURE OF**
14 Defendants.) **CONFIDENTIAL PERSONNEL**
15) **INVESTIGATION OF JEFFREY B.**
16) **LOVE**
17) **Complaint Filed: January 22, 2015**
) **Trial Date: May 3, 2016**
) *(Submitted currently with Joint*
) *Stipulation)*

18 Having considered the Joint Stipulation for a Protective Order re: Disclosure
19 of Confidential Personnel Investigation of Jeffrey B. Love submitted concurrently by
20 the parties and their attorneys of record Derek T. Anderson, attorney for the Plaintiff
21 and Diana L. Field of Ferguson, Praet & Sherman, attorneys for the Defendant, City
22 of Santa Ana.

23 **IT IS HEREBY ORDERED:**

24 **1. GOOD CAUSE: PURPOSE AND SCOPE**

25 On or about January 31, 2014, the City of Santa Ana received an anonymous
26 complaint alleging various allegations of misconduct by Plaintiff. The City retained
27 an independent third party investigator to conduct the investigation. Plaintiff was
28 placed on administrative leave during the pendency of the investigation. The Plaintiff

1 has been provided a redacted copy of the Executive Summary of Mr. Love. The
2 Plaintiff seeks disclosure of the full investigation, which Defendant does not object
3 to, provided that a Protective Order covers the documents produced as the documents
4 are a confidential personnel investigation and contains information confidential and
5 privileged as to the Plaintiff and numerous third party individuals that have a right to
6 privacy. The City has maintained and preserved the confidentiality of this
7 investigation since it was initiated. The Stipulated Protective Order is applicable to:

8 1. Documents that comprise the investigation conducted by Jeffrey B. Love
9 initiated and concluded on or about June 8, 2014.

10 2. Documents which will be produced by Jeffrey B. Love via subpoena
11 regarding the investigation conducted by Jeffrey B. Love regarding Plaintiff Franks.

12 Documents produced under these designations, as well as information extracted
13 therefrom, shall be referred to as “Confidential Information” and shall be subject to
14 this Protective Order.

15 In the event that Plaintiff disagrees that any of the matters Defendant seeks to
16 designate as “confidential” are indeed confidential and later challenge the
17 “confidentiality” designation of any item, she will not be held to higher standard of
18 burden of proof or evidence that is applicable if the challenge was initially made when
19 the objection was initially made.

20 **2. DURATION**

21 The confidentiality obligations imposed by this Protective Order shall remain
22 in effect even after the termination of this litigation, and shall not be lifted without
23 further order of this Court.

24 All documents (including copies forwarded to experts) subject to this order held
25 by any party, its counsel, experts or consultants, shall be returned to counsel for their
26 respective parties no more than sixty (60) calendar days after this litigation is
27 concluded. The receiving party, and every other person and/or entity who received
28 originals or copies of documents containing Confidential Information by Defendant

1 shall return all originals, and all copies of the documents, and material derived
2 therefrom, to counsel for Defendant, in care of: Diana L. Field of Ferguson, Praet &
3 Sherman, APC, 1631 E. 18th Street, Santa Ana, California, 92705 (or to a person
4 designated by said counsel). Any expense incurred in the return of said documents
5 shall be at the expense of the party seeking return of the documents. Any documents
6 containing Confidential Information which have been obtained from third parties or
7 via third party subpoena shall be destroyed or returned to the party whose privacy
8 interest is implicated.

9 The litigation is “concluded” when: (I) a final judgment has been entered by
10 the Court or the case has otherwise been dismissed with prejudice; (ii) the time for any
11 objection to or request for reconsideration of such a judgment or dismissal has
12 expired; (iii) all available appeals have concluded or the time for such appeals has
13 expired; and (iv) any post appeal proceedings have themselves concluded.

14 **3. DESIGNATED CONFIDENTIAL INFORMATION**

15 3.1. Each party that designates Confidential Information for protection
16 under this Protective Order shall ensure that such designation is
17 not over-broad, and applies only to those materials, documents,
18 items, or communications (or portions thereof) for which such
19 protection is warranted.

20 3.2. Confidential Information protected by this Protective Order must
21 be clearly designated prior to the disclosure or production of such
22 Confidential Information, and must bear the notation of
23 “Confidential”. Any and all photographs or video footage
24 contained within a CD or DVD marked “Confidential” are
25 considered Confidential Information. Information and documents
26 provided on a DVD shall have the DVD marked as
27 “Confidential”.

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1 3.3. An inadvertent failure to designate Confidential Information does
2 not waive the producing party's right to secure protection under
3 this Protective Order. If the producing party discovers after
4 production of the Confidential Information that the information is
5 lacking the appropriate designation, the producing party must
6 timely notify the receiving party, who shall make reasonable effort
7 to ensure that the Confidential Information is treated in
8 accordance with the provisions of this Order.

9 **4. TERMS AND CONDITIONS OF USE OF INFORMATION**

10 4.1. Under no circumstances shall "Confidential Information" be used
11 in any proceeding other than the instant case or be disseminated,
12 in any form, except by order of this Court. "Confidential
13 Information" must be stored and maintained by the receiving party
14 at a location and in a secure manner that ensures that access is
15 limited to the person authorized under this Protective Order.

16 4.2. "Confidential Information" and information derived therefrom
17 may not be disclosed in any form to anyone not covered under this
18 protective order.

19 4.3. Disclosure of Information designated "Confidential" shall be
20 limited to the personnel and/or classification of persons listed
21 below:

22 4.3.1. any Party to this action and that Party's counsel;

23 4.3.2. staff and personnel employed by counsel for any party to
24 this action;

25 4.3.3. the Court and court personnel, in connection with this
26 litigation;

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1 4.3.4. during their depositions, witnesses who, from the face of
2 the document, appear to have previously created, authored,
3 or received it; and

4 4.3.5. experts or consultants retained/consulted to work on this
5 case by counsel for any party to this action (each such
6 expert or consultant must agree, in writing, to be bound by
7 the terms of this Protective Order).

8 4.3.6. If Confidential Information or material are used, directly or
9 indirectly, in any depositions taken in this matter, the
10 original transcript of the deposition, and all copies thereof
11 shall be stamped "CONFIDENTIAL, SUBJECT TO
12 PROTECTIVE ORDER" and the portions containing the
13 Confidential Information or material shall be sealed
14 pursuant to Central District Local Rule 79-5.

15 4.3.7. A copy of this Protective Order provided by the Defendant
16 shall be attached as an exhibit to said deposition transcript
17 and the court reporter shall be subject to said Protective
18 Order and precluded from providing the original or copies
19 of the deposition transcript or portions thereof, any copies
20 thereof, or portions of copies thereof, to any persons or
21 entities other than counsel of record in the instant action.
22 Furthermore, any audio and/or video recordings of said
23 deposition shall be subject to this Protective Order. A copy
24 of this Protective Order shall be attached as an exhibit to
25 said audio and/or video recordings of said deposition and
26 the court videographer shall be subject to this Protective
27 Order and precluded from providing the original deposition
28 video recording or portions thereof, any copies thereof, or

1 portions of copies thereof, to any persons or entities other
2 than counsel of record. Any audio recording shall similarly
3 be subject to this Protective Order and all persons shall be
4 precluded from providing the original deposition audio
5 recording or portions thereof, any copies thereof, or
6 portions of copies thereof, to any persons or entities other
7 than counsel of record in the instant litigation.

8 4.3.8. Additionally, anyone other than the following persons shall
9 be precluded from attending any deposition whereat any
10 Confidential Information or confidential material therein
11 are used: the receiving party, the disclosing party or its
12 representative, any parties' counsel, the court reporter, the
13 court videographer, if any, and any of the named parties in
14 this action. Those attending any depositions using
15 Confidential Information or materials shall not disclose to
16 any person or entity not otherwise entitled to the
17 Confidential Information, in any manner, including orally,
18 any statements made by the deponents during the course of
19 said depositions and any such disclosure shall be construed
20 as a violation of this Protective Order.

21 4.4. "Confidential Information" that a party intends to use in support
22 of or in opposition to a pre-trial filing with the Court must be filed
23 in accordance with the Central District of California Local Rules
24 relating to under seal filings, including Local Rule 79-5. Counsel
25 intending to use "Confidential Information" must submit
26 unredacted documents containing such Information under seal.
27 Except as set forth in paragraph 4.4.1., counsel for any party to
28 this action shall advise those individuals to whom disclosure of

1 “Confidential Information” is to be made of the contents of this
2 Protective Order, and such counsel shall obtain the consent of
3 such individual that he or she will be bound by this Protective
4 Order, prior to disclosure of such Information. In the event such
5 individual does not consent to be bound by this Protective Order,
6 no disclosure of “Confidential Information” shall be made to that
7 individual.

8 4.4.1. The foregoing provision shall not apply to the disclosure of
9 “Confidential Information” to the Court or the Court’s staff.

10 4.5 Any counsel, expert, consultant or investigator retained by counsel
11 for any party to this case shall not refer to “Confidential
12 Information” in any other court proceeding without further order
13 of this Court.

14 4.6. The parties shall make good faith efforts to consent to the use of
15 “Confidential Information,” and shall meet and confer to discuss
16 redactions of particularly sensitive information before making use
17 thereof.

18 4.7. Nothing in this Order shall be construed as authorizing a party to
19 disobey a lawful subpoena issued in another action.

20 **5. CHALLENGES TO DESIGNATIONS**

21 5.1. Should a party challenge the designation of “Confidential
22 Information,” that party must do so in good faith, and shall confer
23 directly with counsel for the producing party.

24 5.2. If the parties are unable to resolve the designation informally, the
25 party challenging the designation may file and serve a motion
26 under Civil Local Rules 37-1 and 37-2, including the Joint
27 Stipulation requirement (and in compliance with Civil Local Rule
28 79-5, if applicable), identifying the basis for the challenge. The

1 burden of persuasion in any such challenge proceeding shall be on
2 the party designating “Confidential Information.” The designation
3 of the challenged information shall remain unchanged until the
4 Court rules on the challenge.

5 **6. UNAUTHORIZED DISCLOSURE**

6 6.1. If a receiving party learns that it has disclosed “Confidential
7 Information” to any person or entity not authorized to receive such
8 information pursuant to this Protective Order, the receiving party
9 shall immediately (a) notify the producing party of the
10 unauthorized disclosure, including identification of the person or
11 entity to whom such unauthorized disclosure was made, (b)
12 retrieve all copies of the “Confidential Information” from the
13 unauthorized recipient, (c) inform the unauthorized recipient of
14 the terms of this Protective Order and request that they agree, in
15 writing, to be bound hereto. Should the Court determine that the
16 receiving party intentionally disclosed “Confidential Information”
17 to an unauthorized party, the Court may consider the imposition
18 of sanctions, including but not limited to monetary sanctions
19 and/or issue preclusion.

20 6.2. Under no circumstances shall the receiving party file in the public
21 record any “Confidential Information” without written permission
22 from the producing party or an Order of this Court, and only upon
23 timely written notice to all interested parties. The parties shall
24 make good faith efforts to consent to the use of “Confidential
25 Information” and shall meet and confer to discuss redactions of
26 particularly sensitive information.

27 **7. RIGHT TO ASSERT OBJECTIONS**

1 7.1. By the entry of this Protective Order, the parties are not waiving
2 any rights that they might otherwise have to objecting to
3 disclosure or production of information on any ground not
4 addressed herein. The parties do not waive any right to object to
5 the use in evidence of the material covered by this Protective
6 Order.

7 This Order may not be modified unless by written consent of the parties or
8 approval of the Court. This Order shall survive the termination of this action, and the
9 Court retains jurisdiction to resolve any dispute concerning the disclosure or use of
10 the Confidential Information and material disclosed pursuant to this Order.

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12 **IT IS SO ORDERED.**

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14 Dated: December 22, 2015

By: 

Honorable Douglas F. McCormick
U.S. Magistrate Judge